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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

SEP 27 2005

Applicant : Marshall L. Weingarden Date: ~~September 27, 2005~~
Serial No. : 10/715,180 Art Unit: 3728
Filed : November 17, 2003 Examiner: Bryon P. Gehman
For : HUB POSTS FOR MOUNTING Docket No. A-03.71
INFORMATION-BEARING DISKS

APPELLANT'S BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

(i) REAL PARTY IN INTEREST.

The real party in interest is the applicant/appellant,
namely, Marshall L. Weingarden.

(ii) RELATED APPEALS AND INTERFERENCES.

There are no related appeals or interferences.

(iii) STATUS OF CLAIMS.

This is an appeal from the final rejection entered by the
Examiner in Art Unit 3728, on November 4, 2004, of all of the
claims in the application, namely, claims 1 through 21.

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(iv) STATUS OF AMENDMENTS.

A proposed amendment under 37 CFR §1.116 was filed on March 29, 2005, and was entered for purposes of appeal, as indicated in an Advisory Action dated April 13, 2005.

(v) SUMMARY OF CLAIMED SUBJECT MATTER.

The subject matter of all of the claims of the application pertains to a hub post for mounting an information-bearing disk to a substrate for presentation, storage or transportation of the disk. As set forth in the specification, at page 1, line 9, through page 3, line 5, information-bearing disks, such as CDs, CD-ROMs and DVDs, have been mounted to a variety of structures, such as paperboard presentation folders, cards, books and magazines, as well as in packages, by means of a hub post constructed of a resiliently compressible material, such as rubber, foam plastic and similar resiliently compressible materials affixed to the underlying structure. The relative dimensions of the hub posts and a mounting hole in the disk are such that the disk is gripped with a frictional force sufficient to maintain the disk on the hub post, while enabling selective removal of the disk from the hub post for use.

Unlike prior hub posts constructed of easily compressed materials or of more rigid materials having structural features which enable selective radial contraction and expansion of rigid

gripping elements of a hub post, the present invention provides a structure which is much more simple in construction, more economical to manufacture, easier to use, and more effective in overall performance. In particular, the hub posts of the present invention resist deleterious compression and crushing to provide better securement of an information-bearing disk on a hub post and greater protection to a hub post-mounted information-bearing disk against inadvertent detachment, damage and consequent corruption of data during storage or transportation of a disk.

Four embodiments of the present invention are illustrated and described in the present application, and all four embodiments are set forth in the claims. A first embodiment is illustrated in FIGS. 1 through 4, and described in the specification at page 6, line 3 to page 10, line 11. A second embodiment is illustrated in FIGS. 5 through 7, and described in the specification at page 10, lines 12 through 24. Third and fourth embodiments are illustrated in FIGS. 8 and 9, respectively, and are described at page 11, lines 1 through 19.

Of the twenty-one claims in the application, only claim 1 is an independent claim, and claim 1 is generic to all of the embodiments described in the application. The remaining claims are written in dependent form and include details of the various embodiments.

CLAIM 1

The subject matter of claim 1 may be summarized as follows, with reference to the drawing by way of reference characters placed in brackets, and references to pages and lines of the specification placed in parentheses:

A hub post [10] (page 6, line 5) comprises:

a base [12] (page 6, line 6) having a basal surface [14] (page 6, line 6) extending in a lateral direction for juxtaposition with a substrate [16] (page 6, line 7), the base [12] having a lateral extent [diameter DD, area B] (page 7, lines 2 through 6);

a layer of adhesive [18] (page 6, lines 7, 8) on the basal surface [14];

a post [30] (page 6, line 15) projects from the base [12] in a generally longitudinal direction (page 6, lines 18 through 23), the post [30] including a substantially continuous, unbroken gripping surface [32] (page 6, line 16) having lateral dimensions [D] relative to counterpart lateral dimensions of the mounting hole [42] of the disk [40] for enabling selective gripping and selective release of the disk [40] (page 7, line 14 through page 8, line 16);

the base [12] and the post [30] being integral (page 8, line 24 through page 9, line 2) and at least the post [30] being substantially solid and constructed of a stiffly resilient synthetic polymeric material (page 8, lines 16, 17) having a durometer (page 8, line 24) providing a balance of resilient

characteristics and resilient characteristics for establishing the aforesaid selective gripping and selective release (page 8, lines 17 through 22) and for resisting deleterious compression and crushing while retaining the disk [40] upon the post [30] (page 9, lines 18 through 23).

Thus, claim 1 sets forth a hub post that can be adhered to a substrate, by means of a base and an adhesive layer, to provide a substantially solid post constructed of a stiffly resilient synthetic polymeric material having a durometer which provides the post with a balance of resilient characteristics and resilient characteristics for establishing selective gripping and selective release of a disk, and for resisting deleterious compression and crushing while retaining the disk upon the post. The durometer of the stiffly resilient synthetic polymeric material serves as a means which provides the post with the balance of resilient and resilient characteristics for accomplishing the functions of selective gripping and selective removal of a disk, together with resistance to deleterious compression and crushing while the disk is retained upon the post.

CLAIM 2

Claim 2 depends from claim 1 and adds the feature wherein the base and post are molded in a unitary structure (page 8, line 24 through page 9, line 4).

CLAIM 3

Claim 3 depends from claim 1 and adds the feature wherein the material is substantially solid throughout the base and post (page 8, line 24 through page 9, line 4).

CLAIM 4

Claim 4 depends from claim 1 and adds the feature wherein the material is a urethane (page 8, line 23).

CLAIM 5

Claim 5 depends from claim 1 and adds the feature wherein the durometer of the material is about 55 to 65 Shore A (page 8, line 24).

CLAIM 6

Claim 6 depends from claim 1 and adds the feature wherein the material is substantially transparent for enabling viewing of the substrate through the base (page 10, lines 3 through 7).

CLAIM 7

Claim 7 depends from claim 1 and adds the feature wherein the longitudinal extent [H] of the base [12] spaces the gripping surface [32] from the basal surface [14] for spacing the disk [40] from the substrate [16] (page 9, lines 9 through 18).

CLAIM 8

Claim 8 depends from claim 7 and adds the feature wherein the base comprises a flange [12] (page 6, lines 5, 6) which projects laterally beyond the gripping surface [32] such that the basal surface [14] extends along an area [B] greater than the lateral cross-sectional area [A] of the post [30] (page 7, lines 2 through 11).

CLAIM 9

Claim 9 depends from claim 8 and adds the feature wherein the flange [12] includes a laterally extending surface [38] spaced longitudinally from the basal surface [14] by the longitudinal extent [H] of the base [12] to space a disk [40] from the substrate [16] (page 7, line 11 through 14, page 9, lines 9 through 18).

CLAIM 10

Claim 10 depends from claim 9 and adds the feature wherein the post [30] extends along a central longitudinal axis [34] which will extend essentially normal to the substrate [16] (page 6, lines 21 through 23). The subject matter of claim 10 sets forth structure found in the first described embodiment of the invention.

CLAIM 11

Claim 11 depends from claim 9 and adds the feature wherein the post [68, 82] is canted at a small angle [C] to the central longitudinal axis [66] (page 10, line 12 through page 11, line 7). The subject matter of claim 11 sets forth structure found in the second and fourth described embodiments of the invention.

CLAIM 12

Claim 12 depends from claim 11 and adds the feature wherein the small angle [C] is up to about 5° (page 10, line 23).

CLAIM 13

Claim 13 depends from claim 9 and adds the feature wherein the base and post are molded in a unitary structure (page 8, line 24 through page 9, line 4).

CLAIM 14

Claim 14 depends from claim 9 and adds the feature wherein the material is substantially solid throughout the base and post (page 8, line 24 through page 9, line 4).

CLAIM 15

Claim 15 depends from claim 9 and adds the feature wherein the material is a urethane (page 8, line 23).

CLAIM 16

Claim 16 depends from claim 9 and adds the feature wherein the durometer of the material is about 55 to 65 Shore A (page 8, line 24).

CLAIM 17

Claim 17 depends from claim 9 and adds the feature wherein the material is substantially transparent for enabling viewing of the substrate through the base (page 10, lines 3 through 7).

CLAIM 18

Claim 18 depends from claim 9 and adds the feature wherein the post [30] is generally cylindrical (page 6, lines 16 through 19).

CLAIM 19

Claim 19 depends from claim 9 and adds the feature wherein the post [72, 82] is polyhedral (page 11, lines 4 through 6). The subject matter of claim 19 sets forth structure found in the third and fourth described embodiments of the invention.

CLAIM 20

Claim 20 depends from claim 1 and adds the feature wherein the post [30] is generally cylindrical (page 6, lines 16 through 19).

CLAIM 21

Claim 21 depends from claim 1 and adds the feature wherein the post [72, 82] is polyhedral (page 11, lines 4 through 6). The subject matter of claim 21 sets forth structure found in the third and fourth described embodiments of the invention.

(vi) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.

(A) Final rejection of claims 1-3, 5, 7-10, 13-14, 16, 18 and 20 under 35 U.S.C. 102(b) as being anticipated by Tillett et al. (5,332,089).

(B) Final rejection of claims 1-3, 5, 7-10, 13-14, 16, 18 and 20 under 35 U.S.C. 102(b) as being anticipated by Fliegel (Figures 3-5) (6,574,188).

(C) Final rejection of claims 1-5, 7-10, 13-16, 18 and 20 under 35 U.S.C. 103(a) as being unpatentable over either one of Tillett et al. and Fliegel in view of Attar et al. (5,975,291).

(D) Final rejection of claims 6 and 17 under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 9 above, and further in view of Joyce et al. (5,417,324).

(E) Final rejection of claims 11 and 12 under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 9, and further in view of Condorodis (5,735,396).

(F) Final rejection of claims 19 and 21 under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 9 above, and further in view of Cerda-Vilaplana et al. (6,276,524).

(vii) ARGUMENT.

The present invention is directed to a hub post for mounting an information-bearing disk to a substrate for presentation, storage or transportation of the disk, the hub post being provided with a structure which is much more simple in construction, more economical to manufacture, easier to use, and more effective in overall performance than prior hub posts previously furnished for similar uses. In particular, the improved hub post resists deleterious compression and crushing to provide better securement of an information-bearing disk on a hub post and greater protection to the information-bearing disk mounted upon a hub post against detachment, damage and consequent corruption of data during storage or transportation of a disk. These advantages of the present hub post are attained by a construction which includes a post having a substantially continuous, unbroken gripping surface with lateral dimensions relative to counterpart lateral dimensions of a mounting hole in the disk for enabling selective gripping of the disk upon insertion of the post into the mounting hole, and for selective release of the post from the mounting hole, the post being

constructed of a substantially solid stiffly resilient synthetic polymeric material having a durometer providing a balance of resilient characteristics and renitent characteristics for establishing such selective gripping and selective release and for resisting deleterious compression and crushing while retaining the disk upon the post. Moreover, the selective gripping and release are accomplished without the necessity for supplemental structural elements such as teeth, bumps, lips, ribs, ridges or indentations, any of which can reduce the ease with which effective gripping and release are accomplished, as well as add to the expense of manufacture, a critical consideration in high-volume items such as the present hub posts.

All of the claims set forth the aforesaid specific construction of the post of the present invention. The recitation in the claims of a durometer that accomplishes the functions of balancing resilient characteristics and renitent characteristics to enable selective gripping and selective release while resisting deleterious compression and crushing constitutes a distinctive element of the combination of elements set forth in the claims. *In re Chandler*, 117 USPQ 361 (C.C.P.A. 1958). Moreover, the present specification provides a complete description of that element, including a range of durometer which accomplishes the function which is a part of that element, so that the element is complete as claimed. *E.I. DuPont de Nemours & Co. v. Phillips Petroleum Co.*,

7 USPQ2d 1129 (Fed. Cir. 1988), *Minnesota Mining and Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 24 USPQ2d 1321 (Fed. Cir. 1992), *In re Donaldson*, 29 USPQ2d 1845 (Fed. Cir. 1994).

All of the claims have been rejected on the grounds set forth above. Considering each of those grounds:

(A) Final rejection of claims 1-3, 5, 7-10, 13-14, 16, 18 and 20 under 35 U.S.C. 102(b) as being anticipated by Tillett et al. (5,332,089).

All of the claims enumerated above, namely, claims 1-3, 5, 7-10, 13-14, 16, 18 and 20 are argued below as a group; however, in addition, claims 5 and 16 are argued separately.

Tillett et al. discloses a holder (20) formed of an easily but resiliently compressible material, described as a resiliently compressible material such as a cross-linked, closed-cell polyolefin foam providing the desired easily but resiliently compressible nature (column 4, lines 14-17), an example being a product identified as Twin-Stick 210 from Duraco Inc. (column 6, lines 8, 9). That product is a foam tape provided for adhering together various surfaces. The material is resilient primarily for filling gaps between irregular surfaces to be joined. The product is easily compressible so as to provide the compliance necessary to accomplish that objective. As such, the material allows ready compression and is easily crushed. Ready compression is facilitated by the foamed structure of the material. The ease with

which the material can be compressed and crushed allows ready selective release of a disk from a disk holder constructed of the material; however, by the same token, the ease of compression and crushing affords essentially no protection against inadvertent release during storage and transportation, and concomitant risk of damage to the information-bearing surface of a disk.

In contradistinction, the post set forth in the present claims is substantially solid and is constructed of a stiffly resilient material, and not an easily compressed foamed material, which stiffly resilient material has a durometer rendering the material more resistant than foam materials and highly resistant to deleterious compression and crushing, thereby providing protection against dislodging and damaging of a disk during transport and storage. The reference is entirely silent with respect to any durometer, let alone a durometer which resists compression and crushing. On the contrary, the reference discloses a material which is compressed readily, and is easily crushed. The material specified in the reference is designed specifically for ready compression and easy crushing. Further, the material of the post of the reference is described as a resiliently compressible foamed material, whereas the present claims set forth a post which is substantially solid and constructed of a stiffly resilient material. If any assumption can be made concerning the durometer of the material of the reference, such an assumption would indicate

that the material of the reference has a very low durometer. The statement by the Examiner in the final rejection that the durometer set forth in the present claims "may be inherently met" by the reference completely ignores the true teachings of the reference. Moreover, the statement amounts to conjecture on the part of the Examiner and cannot be the basis upon which anticipation is found in the reference. *W.L. Gore & Assoc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983), *Datascope Corp. v. SMEC, Inc.*, 224 USPQ 694 (D.N.J. 1984). There is no basis in fact provided by the reference. The rejection is based only upon conjecture on the part of the Examiner. The Examiner must find in the reference a basis in fact. *Ex parte Levy*, 17 USPQ2d 1461 (Bd Pat App & Inter 1990). No such basis is found. Accordingly, the reference cannot anticipate the subject matter of the present claims and it is respectfully submitted that the rejection based upon Tillett et al. should be reversed.

Claims 5 and 16

With respect to claims 5 and 16, since these claims depend from other claims in the above group, all of the above arguments also pertain to claims 5 and 16. However, as an additional argument in favor of patentability, it is pointed out that these claims set forth a specific range of durometer, namely, a durometer of about 55 to 65 Shore A, for a stiffly resilient material which

provides the claimed balance of resilient characteristics and resilient characteristics for establishing the desired selective gripping and selective release, and for resisting deleterious compression and crushing while retaining a disk upon the post. The cited reference to Tillett et al. is silent with respect to any specified durometer and discloses nothing which could even suggest a material with a range of durometer within the range specified in claims 5 and 16. Accordingly, it is respectfully submitted that the rejection of claims 5 and 16 as being anticipated by Tillett et al. must be reversed.

(B) Final rejection of claims 1-3, 5, 7-10, 13-14, 16, 18 and 20 under 35 U.S.C. 102(b) as being anticipated by Fliegel (Figures 3-5) (6,574,188).

All of the claims enumerated above, namely, claims 1-3, 5, 7-10, 13-14, 16, 18 and 20 are argued below as a group; however, in addition, claims 5 and 16 are argued separately.

Fliegel discloses a button disk constructed of "moss rubber, which is relatively soft". In fact, moss rubber is a soft, highly compliant rubber and is used where a yielding, easily compressed material is desired, such as in the manufacture of squeegees. The

reference specifically calls for such a yielding material. Further, the reference relies upon structural features to supplement the yielding nature of the button disk in securing a disk in place.

In contradistinction, the present claims set forth a balance of resilience and renitence provided by the durometer of the material of the hub post to accept and secure a disk in place. Moreover, the renitent nature of the material resists deleterious compression and crushing and consequently resists inadvertent release of a mounted disk, and concomitant damage to the information-bearing surface of the disk. The reference is directed only to a soft moss rubber material or the like which facilitates selective release of a disk, and is silent with respect to any stiffly resilient material having a durometer which can resist deleterious compression and crushing. Again, the Examiner's statement that the durometer set forth in the present claims "may be inherently met" by the reference ignores the true teaching found in the reference. As set forth above, in connection with the rejection based upon Tillett et al., the statement amounts to conjecture on the part of the Examiner and cannot be the basis upon which anticipation is found in the reference. *W.L. Gore & Assoc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983), *Datascope Corp. v. SMEC, Inc.*, 224 USPQ 694 (D.N.J. 1984). There is no basis in fact provided by the reference. The rejection is based only upon

conjecture on the part of the Examiner. The Examiner must find in the reference a basis in fact. *Ex parte Levy*, 17 USPQ2d 1461 (Bd Pat App & Inter 1990). No such basis is found. Accordingly, the reference cannot anticipate the subject matter of the present claims and it is respectfully submitted that the rejection based upon Fliegel should be reversed.

Claims 5 and 16

With respect to claims 5 and 16, since these claims depend from other claims in the above group, all of the arguments set forth immediately above also pertain to claims 5 and 16. However, as an additional argument in favor of patentability, it is pointed out that these claims set forth a specific range of durometer, namely, a durometer of about 55 to 65 Shore A, for a stiffly resilient material which provides the claimed balance of resilient characteristics and resilient characteristics for establishing the desired selective gripping and selective release, and for resisting deleterious compression and crushing while retaining a disk upon the post. The cited reference to Fliegel is silent with respect to any specified durometer and discloses nothing which could even suggest a material with a range of durometer within the range specified in claims 5 and 16. Accordingly, it is respectfully submitted that the rejection of claims 5 and 16 as being anticipated by Fliegel must be reversed.

(C) Final rejection of claims 1-5, 7-10, 13-16, 18 and 20 under 35 U.S.C. 103(a) as being unpatentable over either one of Tillett et al. and Fliegel in view of Attar et al. (5,975,291).

All of the claims enumerated above, namely, claims 1-5, 7-10, 13-16, 18 and 20 are argued below as a group; however, in addition, claims 5 and 16 are argued separately.

The shortcomings of the references to Tillett et al. and Fliegel are set forth in detail above and are incorporated herein. Attar et al. illustrates a protrusion, referred to as a "heart", for entering the aperture of a CD. The portion of the heart (23) which engages the aperture of the CD is modified to provide teeth (79), bumps (25), horizontal ribs (26), a lip (27), vertical ridges (20) or an indentation (FIG. 6B) for gripping or otherwise retaining the CD on the heart. Thus, the surface of the heart relies upon these discontinuous modifications to provide structural elements which retain the CD. While one of the materials identified in the reference is polyurethane, that material is specified for very resilient teeth 79 formed on a rigid hub 81 and requires that the material be "sufficiently soft so as to allow some flexure of the teeth 79." Note the indication at column 4,

line 60 through column 5, line 3, that where the heart is straight walled (FIGS. 2C and 2D) the resilient material which grips the CD "should be very flexible and resilient". The proposed substitution of the material specified by Attar et al. for the material identified in Tillett et al. or Fliegel might suggest the addition of teeth, bumps, ribs, ridges, an indentation, or a lip, but the basic nature of the material would remain unchanged, that is, soft, very flexible and resilient, and highly compliant to facilitate selective mounting and release of a CD.

In contradistinction, the subject matter of the present claims includes a substantially solid post with a substantially continuous, unbroken gripping surface which relies upon a stiffly resilient material having a durometer that provides a balance of resilience and renitence to accomplish not only gripping and retention of a disk, but resistance to deleterious compression and crushing for protection against inadvertent release of a disk, and concomitant damage during transportation and storage. The hub post of the present claims does not rely upon a lip, ribs, teeth, bumps, ridges, an indentation or any similar modification of the gripping surface. Moreover, the references are silent with respect to the durometer set forth in all of the claims and, more specifically, in claims 5 and 16, and suggest materials only of substantially lesser durometer. The statement by the Examiner the "the durometer should be inherently met" by the a material disclosed in Attar et al. not

only is conjecture on the part of the Examiner, but is in conflict with the true teachings of the reference. All of the materials specified by Attar et al. for gripping the CD are described in the reference as soft and very flexible and resilient. As set forth above, conjecture on the part of the Examiner cannot be relied upon to negate patentability. Further, where such conjecture is in conflict with the actual disclosure in the reference, the reference is not available to show obviousness. The gripping and retention mechanism set forth in the present claims is entirely different from the gripping and retention mechanisms disclosed in Tillett et al., Fliegel or Attar et al. or in any tenable combination suggested in these references. Accordingly, the proposed combination of Attar et al. with Tillett et al. or Fliegel cannot render obvious the subject matter of the present claims and it is respectfully submitted that the rejection based upon the proposed combination of references should be reversed.

Claims 5 and 16

With respect to claims 5 and 16, since these claims depend from other claims in the above group, all of the arguments set forth immediately above also pertain to claims 5 and 16. However, as an additional argument in favor of patentability, it is pointed out that these claims set forth a specific range of durometer, namely, a durometer of about 55 to 65 Shore A, for a stiffly

resilient material which provides the claimed balance of resilient characteristics and resilient characteristics for establishing the desired selective gripping and selective release, and for resisting deleterious compression and crushing while retaining a disk upon the post. The cited references to Tillett et al., Fliegel and Attar et al. are silent with respect to any specified durometer and disclose nothing which could even suggest a material with a range of durometer within the range specified in claims 5 and 16. Accordingly, it is respectfully submitted that the rejection of claims 5 and 16 on the basis of being rendered obvious by any combination of Tillett et al. or Fliegel with Attar et al. must be reversed.

(D) Final rejection of claims 6 and 17 under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 9 above, and further in view of Joyce et al. (5,417,324).

The shortcomings of the references to Tillett et al., Fliegel and Attar et al. are set forth in detail above and are incorporated herein. Joyce et al. discloses the use of a polystyrene having mechanical characteristics which differ considerably from the material specified in the present claims and adds nothing by way of

rendering obvious the subject matter of the present claims. While it may be well-known to utilize transparent materials in connection with the construction of CD containers, the material specified by Joyce et al. is characterized as being "relatively brittle" and the reference suggests nothing which can be combined with Tillett et al. or Fliegel and Attar et al. to render obvious the combination of elements of the present claims, which set forth a substantially solid post constructed of a stiffly resilient material having a very specific durometer, which material is substantially transparent. Obviousness cannot be established merely by picking and choosing features of several prior art references to construct a combination disclosed by the applicant. *In re Donovan and Ryan*, 184 USPQ 414, (C.C.P.A. 1971). Accordingly, it is respectfully submitted that the rejection based upon the proposed combination of Tillet et al. or Fliegel with Attar et al. and Joyce et al. should be reversed.

(E) Final rejection of claims 11 and 12 under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 9, and further in view of Condorodis (5,735,396).

The shortcomings of the references to Tillett et al., Fliegel and Attar et al. are set forth in detail above and are incorporated herein. Condorotis discloses a post 26 which extends from a center plate 24 and terminates in a ramped face 27. While the ramped face does make an angle with the post, the post itself projects perpendicular to the plate and is not canted relative to the plate. Moreover, the angle between the ramped face and the perpendicular direction is relatively steep. The purpose of the ramped post configuration is to facilitate the insertion of a CD into a pocket within which the post projects.

Present claims 11 and 12 set forth a construction in which the hub post itself is canted at a small angle from an axis extending substantially normal to the substrate upon which the hub post is to be affixed. As set forth in the present specification, at page 10, lines 17 through 23, the canted configuration deters inadvertent release of a disk from the post, and the angle of the canted post is not so great as to significantly impede intentional selective release.

With respect to the subject matter of present claims 11 and 12, Condorotis discloses a completely different structure for performing a completely different function and discloses or suggests nothing of relevance toward anticipation or rendering obvious the subject matter of claims 11 and 12, which subject matter includes a post canted at a small angle to an axis

substantially perpendicular to the substrate upon which the hub post of the invention is to be affixed. Accordingly, it is respectfully submitted that the rejection based upon Condorotis should be reversed.

(F) Final rejection of claims 19 and 21 under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 9 above, and further in view of Cerda-Vilaplana et al. (6,276,524).

The shortcomings of the references to Tillett et al., Fliegel and Attar et al. are set forth in detail above and are incorporated herein. Cerda-Vilaplana et al. retains a disk with a plurality of circumferentially spaced apart flexible stems (3) which grasp the disk along the edge of a center hole in the disk. A polygonal button is located radially inside the circle of stems, spaced radially inwardly away from the stems, and serves as an actuator for releasing the disk from the grasp of the stems. Thus, upon depression of the polygonal button, the stems are biased radially inwardly, out of contact with the disk, and the disk is released. The reference discloses no polyhedral post which engages a disk to be retained on the post and cannot serve as a basis for rendering obvious the subject matter of present claims 19 and 21, which

subject matter includes a polyhedral post upon which a disk is retained through engagement with the polyhedral post. Accordingly, the reference has no relevance to the subject matter of these claims and it is respectfully submitted that the rejection, which relies upon the disclosure in Cerda-Vilaplana et al., should be reversed.

(viii) CLAIMS APPENDIX

The following is a copy of the claims involved in the appeal:

1. A hub post for mounting an information-bearing disk to a substrate for presentation, storage or transportation of the disk, the disk including a mounting hole, and the hub post and the mounting hole having relative dimensions enabling gripping of the disk upon reception of the hub post within the mounting hole of the disk to secure the disk to the hub post and allow selective release of the disk from the hub post, the hub post comprising:

a base having a basal surface extending in a lateral direction for juxtaposition with the substrate, the base having a longitudinal extent;

a layer of adhesive on the basal surface for affixing the basal surface to the substrate; and

a post projecting from the base in a generally longitudinal direction, the post including a substantially continuous, unbroken

gripping surface having lateral dimensions relative to counterpart lateral dimensions of the mounting hole of the disk for enabling selective gripping of the disk upon insertion of the post into the mounting hole, and for selective release of the post from the mounting hole;

the base and the post being integral and at least the post being substantially solid and constructed of a stiffly resilient synthetic polymeric material having a durometer providing a balance of resilient characteristics and resilient characteristics for establishing the aforesaid selective gripping and selective release and for resisting deleterious compression and crushing while retaining the disk upon the post.

2. The hub post of claim 1 wherein the base and post are molded in a unitary structure.

3. The hub post of claim 1 wherein the material is substantially solid throughout the base and post.

4. The hub post of claim 1 wherein the material is a urethane.

5. The hub post of claim 1 wherein the material has a durometer of about 55 to 65 Shore A.

6. The hub post of claim 1 wherein the material is substantially transparent for enabling viewing of the substrate through the base.

7. The hub post of claim 1 wherein the longitudinal extent of the base spaces the gripping surface from the basal surface for spacing the disk from the substrate when the basal surface is adhered to the substrate and the post is received within the mounting hole of the disk.

8. The hub post of claim 7 wherein the post includes a lateral cross-sectional area, and the base comprises a flange projecting laterally beyond the gripping surface of the post such that the basal surface extends along an area greater than the lateral cross-sectional area of the post.

9. The hub post of claim 8 wherein the flange includes a laterally extending surface spaced longitudinally from the basal surface by the longitudinal extent of the base such that upon seating of the disk on the post, the disk confronts the laterally extending surface of the flange, with the disk spaced longitudinally from the substrate by the longitudinal extent of the base.

10. The hub post of claim 9 wherein the flange includes a central longitudinal axis for extending substantially normal to the substrate upon juxtaposition of the basal surface with the substrate, and the post extends along the longitudinal axis.

11. The hub post of claim 9 wherein the flange includes a central longitudinal axis for extending substantially normal to the substrate upon juxtaposition of the basal surface with the substrate, and the post is canted at a small angle to the central longitudinal axis.

12. The hub post of claim 11 wherein the small angle is up to about 5°.

13. The hub post of claim 9 wherein the base and post are molded in a unitary structure.

14. The hub post of claim 9 wherein the material is substantially solid throughout the base and post.

15. The hub post of claim 9 wherein the material is a urethane.

16. The hub post of claim 9 wherein the material has a durometer of about 55 to 65 Shore A.

17. The hub post of claim 9 wherein the material is substantially transparent for enabling viewing of the substrate through the base.

18. The hub post of claim 9 wherein the post is generally cylindrical.

19. The hub post of claim 9 wherein the post is polyhedral.

20. The hub post of claim 1 wherein the post is generally cylindrical.

21. The hub post of claim 1 wherein the post is polyhedral.

CONCLUSIONS

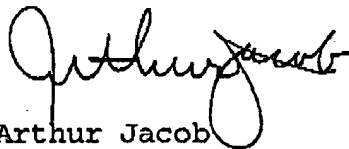
It is respectfully submitted that the rejection of claims 1 through 21, constituting all of the claims in the application, is unwarranted and improper under 35 U.S.C. 102(b) and 35 U.S.C. 103.

In view of the foregoing arguments and authorities, it is respectfully submitted that the Examiner has erred in finally rejecting all of the appealed claims and it is respectfully requested that the rejection of all of the appealed claims be reversed by this Honorable Board.

Please charge the total amount of two-hundred-fifty dollars (\$250) to my credit card, as per the accompanying Credit Card Payment form (PTO-2038) to cover the fee for filing a brief in support of an appeal. Applicant qualifies for small entity status.

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Respectfully submitted,



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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 CFR 1.8

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FACSIMILE
TRANSMITTED TO COMMISSIONER FOR PATENTS, (571) 273-8300 ON

SEPTEMBER 27, 2005

DATE

ANDREW JACOB

NAME OF REGISTERED REPRESENTATIVE

Andrew Jacob

SIGNATURE

9/27/05

DATE

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